

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re
HUY YING CHEN,

Plaintiff/Appellant,

v.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., f/k/a The Bank
of New York Trust Company, N.A., as
Successor to JPMorgan Chase Bank, N.A., as
Trustee for Residential Asset Mortgage
Products, Inc., Mortgage Asset-Backed Pass-
Through Certificates of Series 2005-RP3.,

Defendants/Appellee

JASON WILSON-AGUILAR, Chapter 13
Trustee, et al,

Appellee

Case No. 2:22-cv-01231-RSM

ORDER DISMISSING APPEAL AND
AFFIRMING THE BANKRUPTCY
COURT'S ORDERS

I. INTRODUCTION

This matter comes before the Court on Appellant, appearing *pro se*, Huy Ying Chen's Opening Brief and Reply Brief¹ (Dkt. Nos. 12 and 19), and Appellees The Bank of New York

¹ Dkts. Nos. 20 and 21 are duplicates of Appellant's Reply Brief (Dkt. 19).

1 Mellon Trust Company, N.A. k/a The Bank of New York Trust Company, N.A., as Successor to
2 JPMorgan Chase Bank, N.A., as Trustee for Residential Asset Mortgage Products, Inc.,
3 Mortgage Asset-Backed Pass-Through Certificates of Series 2005-RP3., (“The Bank”) and
4 Jason Wilson-Aguilar (“Trustee”)’s Brief by Trustee and Brief by The Bank of New York
5 Mellon Trust Company NA (Dkt. Nos. 14 and 15). Having considered the briefs and exhibits
6 submitted by the parties, the Court AFFIRMS the decision of the bankruptcy court dismissing
7 Mr. Chen’s Chapter 13 Case with a two-year bar.
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9 **II. BACKGROUND**

10 **A. The Loan, Default, and Foreclosure Judgment.**

11 In February 1999, Washington Mutual Bank loaned Mr. Chen \$525,000, secured by a
12 deed of trust filed against the subject Property as instrument 9902091524 on February 9, 1999.
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14 On May 10, 2006, The Bank, as successor to Washington Mutual, initiated a judicial
15 foreclosure action in response to missed payments on the loan. On March 19, 2007, Mr. Chen
16 filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Western
17 District of Washington. On April 13, 2007, Mr. Chen removed the judicial foreclosure action to
18 the Bankruptcy Court as an adversary proceeding. On November 29, 2007, the Bankruptcy
19 Court granted The Bank’s Motion for Summary Judgment and ordered a foreclosure sale to
20 proceed in satisfaction of the \$647,478.68 debt Mr. Chen owed to The Bank at the time.
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22 On or about December 10, 2007, Mr. Chen filed a Notice of Appeal in Bankruptcy Court
23 to challenge the Judgment and Decree of Foreclosure. On March 24, 2008, this Court denied Mr.
24 Chen’s request for a stay of The Bank’s foreclosure during appeal.
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26 On or about May 22, 2008, The Bank filed its foreign judgment (the “Foreclosure
27 Judgment”) in the King County Superior Court under Case No. 08-2-13281-1 SEA. On August
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1 13, 2008, the Bankruptcy Court dismissed Mr. Chen’s Chapter 11 bankruptcy petition and
2 barred him from filing a new bankruptcy case for 180 days. On or about September 24, 2008,
3 Mr. Chen’s appeal was dismissed. On or about October 2, 2008, The Bank obtained a Writ for
4 Order of Sale to foreclose on the subject Property. On or about January 2, 2009, the King
5 County Sheriff returned the Writ because the scheduled sale did not occur.
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7 **B. Mr. Chen Files Suit Against The Bank in *Chen I*.**

8 On September 28, 2011, Mr. Chen filed suit against The Bank under King County
9 Superior Court cause no. 11-2-33383-3 SEA (“*Chen I*”). On February 3, 2012, King County
10 Superior Court granted a dismissal with prejudice of Mr. Chen’s suit.
11

12 **C. Sherriff’s Sale Occurs**

13 On or about October 20, 2016, a new Order of Sale was issued in King County Superior
14 Court. On or about October 20, 2016, the King County Sheriff’s Office was instructed to
15 proceed with sale of the Property and provide the requisite statutory notices. On October 24,
16 2016, a Sheriff’s Levy on Real Property was recorded with the King County Auditor. On or
17 about December 12, 2016, Mr. Chen filed a “Motion to Dismiss a Wrongful Judicial
18 Foreclosure” in King County Superior Court under the 2008 cause number. Mr. Chen also
19 submitted an “Affidavit... in Support of Ex Parte Motion for an Order Shortening Time,” dated
20 December 5, 2016, and referencing his address in Redmond, WA. On December 15, 2016, King
21 County Superior Court denied Mr. Chen’s motion, permitting the sheriff’s sale to proceed in
22 satisfaction of the underlying judgment.
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25 On December 16, 2016, the sheriff’s sale occurred. On December 23, 2016, a Notice of
26 Return of Sheriff’s Sale on Real Property was filed with King County Superior Court. *Id.* On
27 January 12, 2017, Mr. Chen filed an Objection to Confirmation of the Sheriff’s Sale. On
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1 February 10, 2017, after reviewing the parties' briefing, the Hon. Beth Andrus overruled
2 Debtor's objections.

3 After the Superior Court denied reconsideration, Mr. Chen appealed to the Washington
4 Court of Appeals, Division One. On February 14, 2018, the Superior Court granted a motion to
5 confirm the sheriff's sale in favor of The Bank of New York Mellon (as successor to Chase). On
6 October 8, 2018, the Washington Court of Appeals affirmed the Superior Court in an
7 unpublished opinion. On April 3, 2019, the Washington Supreme Court denied Mr. Chen's
8 request for review.
9

10 **D. Mr. Chen Files Lawsuit Challenging the Foreclosure in *Chen II*.**

11 Mr. Chen filed a new lawsuit in the United States District Court, Western District of
12 Washington, cause 18-cv-01269 MAT ("*Chen II*"). On April 17, 2019, the Court presided over
13 by the Honorable Robert S. Lasnik entered an order granting Defendants' Motions and
14 dismissed *Chen II*. On May 24, 2019, the Court denied Mr. Chen's Motion for Reconsideration.
15

16 **E. Mr. Chen Files a Lawsuit Against the Same Defendants in *Chen III*.**

17 On June 5, 2019, Mr. Chen filed a new lawsuit in King County Superior Court under
18 cause no. 19-2-15034-3 SEA ("*Chen III*"). On October 2, 2019, the Hon. Annette Messitt
19 granted a Motion to Dismiss for Failure to State a Claim filed by The Bank. On October 16, the
20 same Court denied Mr. Chen's Motion for Reconsideration of the order dismissing the Trust.
21

22 A short time later, Mr. Chen filed a Notice of Appeal to the Washington Court of
23 Appeals, Division I under cause no 80750-1-I. On July 15, 2021, the Court of Appeals filed a
24 Certificate of Finality with the trial court under cause no. 19-2-15034-3 SEA, memorializing its
25 denial of Mr. Chen's petition for discretionary review of the Order dismissing the Trust. Further,
26 on October 15, 2021, the Court of Appeals filed a Mandate under cause no. 19-2- 15034-3,
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1 certifying its prior unpublished opinion of March 1, 2021, terminating review of *Chen III* and
2 noting that a corresponding Order denying petition for review was entered in the Supreme Court
3 on October 6, 2021.

4 **F. Mr. Chen Files an Emergency Motion to Stay Proceedings**

5 On February 14, 2018, King County Superior Court Judge Mariane Spearman found that
6 the Trust is the owner of the Property and entered an Order Granting The Bank's Motion to
7 Confirm the Sheriff's Sale. After Mr. Chen's collateral litigation was dismissed with prejudice
8 against Mr. Chen as well as his appeal regarding same was dismissed, The Bank moved to re-
9 issue the Writ.
10

11 On December 3, 2021, The Bank moved for and was granted entry of an Amended
12 Judgment of Unlawful Detainer and obtained an Order Granting Writ of Restitution. The Writ
13 was subsequently issued by King County Superior Court's Presiding Judge Patrick H. Oishi on
14 March 24, 2022, and was thereafter processed by the King County Sheriff and an eviction notice
15 was posted on the premises of the Property stating that its occupants would be evicted any time
16 after April 4, 2022.
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18 On April 5, 2022, Mr. Chen filed an Emergency Motion to Stay Proceedings or Quash
19 the Writ, which was denied by King County Superior Court Commissioner Henry Judson with
20 prejudice.
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22 **G. Mr. Chen Files a Chapter 13 Bankruptcy Petition for the Underlying Case**

23 Mr. Chen filed his Chapter 13 bankruptcy case on April 14, 2022. The Confirmation
24 hearing was set by the Court for June 23, 2022. Mr. Chen filed a Chapter 13 Plan on May 16,
25 2022. The Chapter 13 Trustee filed an Objection to Confirmation on June 16, 2022. The Trustee
26 also filed a Motion to Dismiss Case on June 16, 2022. The Chapter 13 Trustee's Motion to
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1 Dismiss Case was noted on the Court's July 21, 2022, calendar. The Chapter 13 Trustee's
2 Motion to Dismiss Case was served on June 20, 2022.

3 On June 21, 2022, creditor The Bank filed a Motion for Relief from the Automatic Stay.
4 The creditor's Motion was noted for the Court's July 14, 2022, calendar. On July 14, 2022, the
5 Court granted The Bank's Motion for Relief from the Automatic Stay. The Court entered an
6 Order Denying Confirmation of the Mr. Chen's Chapter 13 Plan on June 24, 2022.
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8 On July 14, 2022, Mr. Chen filed a Response to the Chapter 13 Trustee's Motion to
9 Dismiss Case. On July 21, 2022, the Court entered an Order continuing the hearing on the
10 Chapter 13 Trustee's Motion to Dismiss Case to the Court's August 18, 2022, calendar and
11 setting a deadline of August 11, 2022, for Mr. Chen to file an additional response addressing
12 whether the case should be dismissed with a two-year bar to re-filing any bankruptcy case.
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14 On August 11, 2022, Mr. Chen filed a Response addressing whether his case should be
15 dismissed with a two-year bar to re-filing any bankruptcy case. On August 19, 2022, the Court
16 entered an Order dismissing Mr. Chen's case and barring him from filing any bankruptcy case
17 for two years. On August 22, 2022, Mr. Chen filed a Motion to Reconsider the Bankruptcy
18 Court's Order dismissing his case. On August 24, 2022, the Court entered an Order denying Mr.
19 Chen's Motion to Reconsider. Mr. Chen is now appealing the Bankruptcy Court's Judgment
20 before this Court.
21

22 **III. LEGAL STANDARD**

23 This Court may review the bankruptcy court's decision. 9 U.S.C. § 16(a)(1)(A)–(B); 28
24 U.S.C. § 158(a)(1). The standard of review is “clear error” and “abuse of discretion.” *In re*
25 *Leavitt*, 171 F.3d 1219, 1223 (9th Cir. 1999). Whether the bankruptcy court applied the correct
26 legal standard is reviewed *de novo*. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir.
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2009) (en banc). Discretion is abused when a Court applies the incorrect legal rule, or where the Court's application of the law was illogical, implausible, or without support of inferences from the record. *Ahanchian v. Xenon Pictures, Inv.*, 624 F. 3d 1247, 1262. This Court also reviews the bankruptcy court's finding of bad faith for clear error. *In re Eisen*, 14 F.3d 469, 470 (9th Cir.1994).

A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97 at 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)).

IV. ANALYSIS

A. The Court Did Not Commit Clear Error or Abuse Its Discretion in Finding that Mr. Chen's Plan was filed in Bad Faith

Upon motion of an interested party, a petitioner's Chapter 13 bankruptcy case can be dismissed for cause. 11 U.S.C. § 1307(c). A "bad faith" filing is sufficient to dismiss for cause. *Leavitt*, 171 F.3d at 1224. Bad faith is determined based upon the "totality of the circumstances." *In re Tucker*, 989 F.2d 328, 330 (9th Cir. 1993). Relevant factors when determining bad faith filing, as enumerated in *Leavitt*, include: (1) Misrepresentation of facts in the debtor's petition or plan; (2) The debtor's history of filing bankruptcy actions; (3) Whether the debtor filed to defeat State Court litigation; and (4) Whether the debtor has behaved egregiously. 71 F.3d at 122.

In his Opening Brief, Mr. Chen does not assert that the Bankruptcy Court committed clear error or abuse of its discretion in dismissing his case with a two-year bar from filing any

1 bankruptcy cause of action.² However, the Appellees argue that the Court had cause to dismiss
2 Mr. Chen's case because Mr. Chen failed to file a plan as ordered by the Court in its Order
3 Denying Confirmation. This Court agrees with the Appellees.

4 Regarding the two-year bar to re-filing, the Appellees assert that the Court did not
5 commit clear error or abuse its discretion in finding that Mr. Chen's case was filed in bad faith
6 under the *Leavitt* factors. The record leaves no doubt Mr. Chen filed his petition in bad faith. Mr.
7 Chen has a history of bankruptcy filings including a previous six-month bar. Furthermore, Mr.
8 Chen has made numerous civil filings all relating to the issues he presented in his Chapter 13
9 bankruptcy case, in each of which the Court found against Mr. Chen. Upon considering the facts
10 of Mr. Chen's case, the bankruptcy judge properly dismissed the petition with a two-year bar
11 under 11 U.S.C. § 1307(c).
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14 **B. The Court Properly Granted Appellee's Motion for Relief from Stay Pursuant**
15 **to 11 U.S.C. § 362(d).**

16 Under the Bankruptcy Code, when a debtor files his petition for bankruptcy, he receives
17 the benefit of an automatic stay that is imposed on his creditors, preventing them from
18 proceeding to collect on their claims. 11 U.S.C. § 362(a). Upon request of a party in interest
19 after notice and a hearing, the court shall grant relief from stay for cause. 11 U.S.C. § 362(d). A
20 petition filed in bad faith provides sufficient cause for dismissal. *In re Arnold*, 806 F.2d 937 (9th
21 Cir.1986).
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27 ² Mr. Chen argues that Appellees are "nonexistent entities [and thus] have no stand[ing] to sue." Dkt. #12 at
28 7. The Trust and Trustee correctly point out that Mr. Chen has not provided any evidence supporting the assertion
that they are non-existent entities, and anyway Mr. Chen raised similar arguments to no avail at both the trial and
appellate levels numerous times. Therefore, the Court does not address Mr. Chen's standing argument.

1 The Bank argues that the Court properly granted their Motion for relief from stay
2 because the record amply supports a finding of bad faith. This Court agrees. Since 2004, Mr.
3 Chen has petitioned for bankruptcy protection four separate times, all of which were
4 unsuccessful. In the meantime, The Bank was unlawfully excluded from possession of property
5 it legitimately owned as a matter of law, for a period greater than 15 years. Accordingly, this
6 Court agrees that good cause supported the Court's Order confirming that The Bank was
7 relieved from the automatic stay in order to take possession of the Property.
8

9 **V. CONCLUSION**

10 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
11 finds and ORDERS that the Bankruptcy Court's Order is AFFIRMED.
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13 DATED this 31st day of August, 2023.
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16 RICARDO S. MARTINEZ
17 UNITED STATES DISTRICT JUDGE
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